IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 749 OF 2005

Madhukar Moolya ...Appellant

Versus

Susheela R. Kulal & Ors ...Respondents

.....

Mrs. A.S. Malwankar, counsel for Appellant

Mr. Atul P. Malgaonkar, counsel for Respondent 2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 20TH JULY, 2005

P. C.:-

1. Heard Mrs. Malwankar, the learned counsel for the appellant who is the defendant No.1 in S.C. Suit No.5333 of 2004. The plaintiffs are his sisters who have been impleaded as respondent Nos. 1 to 4 in the present appeal.

2. Notice of Motion No. 4570 of 2004 was partly allowed by directing the present appellant not to obstruct the plaintiff from entering the suit shop i.e. Shop No.37 located in the building known as Ever Shine Co-operative Housing Society Ltd., Seven Bunglow, Andheri (W), Mumbai. The appellant is further restrained from creating any third party interest or should not induct any third party in the

suit premises.

3. Two different Motions were taken out afresh. One for appointment of Court Commissioner and other one for consideration of striking out of defence on the ground that the injunction order was violated. By the impugned order dated 30.6.2005 the learned Judge of the City Civil Court at Mumbai has directed the parties to lead their evidence in support of both the motions and in the meanwhile the appellant has been directed to deposit Rs.10,000/- per month w.e.f. February, 2005. It has been further made clear that non compliance of the order will be considered for striking of the defence in the suit as well as in the notice of Motion.

4. From the impugned order, it appears that the parties have referred the matter to Lok Adalat and there was no possibility of settlement. The appellant did not file reply to the Notice of Motion for compliance. The defendant No.2 filed his affidavit contending that he has been employed by the defendant to work in the suit shop. To protect the interest of the plaintiffs, who had alleged that the said Jatin Khurana had his own running hotel business, in the shop the trial Court has passed the order directing to deposit of Rs.10,000/- per month. On recording evidence, if the motion fail, the

appellant may apply for withdrawal of the amount and it is clear from the impugned order that liberty has not been given to the plaintiff to withdraw the amount.

5. Under the circumstances, there is no reason to entertain this appeal against such an interlocutory order.

6. Appeal is therefore, dismissed in limine.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 881 OF 2005
IN
APPEAL FROM ORDER NO. 749 OF 2005

Madhukar Moolya ...Applicant

Versus

Susheela R. Kulal & Ors ...Respondents

.....

Mrs. A.S. Malwankar, counsel for Applicant

Mr. Atul P. Malgaonkar, counsel for Respondent 2.

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 20TH JULY, 2005

P. C.:-

. In view of the disposal of Appeal from order, this application does not survive and the same is disposed of as infructuous.

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